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#18 Reply Brief  
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5/29/03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: Pullaro, Terry J.

Serial No.: 09/598,110

Filed: June 21, 2000

For: Sports Training and Conditioning Device

Examiner: Alvin A. Hunter

Group Art Unit: 3711

Commissioner for Patents  
Washington, D.C. 20321

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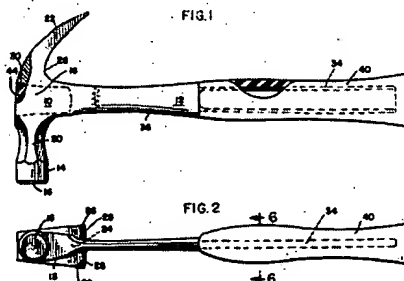
APPLICANTS' REPLY BRIEF

Pursuant to 37 C.F.R. § 1.193(b)(1), Applicant submits its Reply Brief, as follows:

THE DEVICE SET FORTH IN CLAIMS 2, 3, 9 -13, AND 17  
IS NOT ANTICIPATED BY LAY, U.S. PATENT NO. 2,884,816

The Answer states that "the grip portion of Lay is clearly 'shaped like' the grip of many sports implements, like a tennis racket." [Page 5, Paragraph 1]. Applicant submits that the grip of Lay is shaped like the grip of a hammer:

arg the question



THE DEVICE SET FORTH IN CLAIMS 2, 3, 9 -13, AND 17  
IS NOT ANTICIPATED BY STONEBURNER, U.S. PATENT NO. 3,930,525

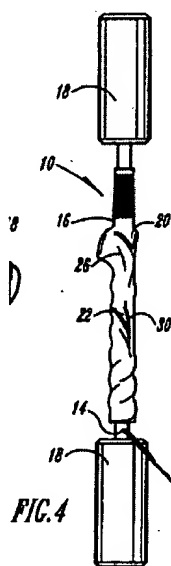
The Section 102 rejection over Stoneburner, U.S. Patent No. 3,930,525 is not referenced in the Answer, and is presumed withdrawn.

THE DEVICE SET FORTH IN CLAIMS 2-5 AND 14-17  
IS NOT ANTICIPATED BY HILL, U.S. PATENT NO. 3,543,715

The Section 102 rejection over Hill, U.S. Patent No. 3,543,715 is not referenced in the Answer, and is presumed withdrawn.

THE DEVICE SET FORTH IN CLAIMS 2 AND 17  
IS NOT ANTICIPATED BY HUFFMAN, U.S. PATENT NO. 5,215,307

The Answer states that the Huffman device comprises a grip portion of a specific desired sport, but this is not the same as a handle "shaped like the grip portion of the implement" as required by the claims. Moreover, with weights on both ends, the Huffman device is clearly not shaped like the grip of any sports implement. The required weight at both ends prevents the handle of Huffman from being shaped like the grip portion of a sports implement:



THE DEVICE SET FORTH IN CLAIMS 4 - 6 and 14 – 16 WOULD NOT HAVE BEEN OBVIOUS FROM STONEBURNER, U.S. PATENT NO. 3,930,525

The Section 103 rejection over Stoneburner, U.S. Patent No. 3,930,525 is not referenced in the Answer, and is presumed withdrawn.

THE DEVICE SET FORTH IN CLAIMS 4, 5, AND 9 – 17 WOULD NOT HAVE BEEN OBVIOUS FROM LAY, U.S. PATENT NO. 2,884,816 IN VIEW OF OFFICIAL NOTICE

Lay does not teach or make obvious the handle configuration specifically claimed in applicant's claims.

The Answer states that it would be obvious to make the hammer head of Lay have a diameter and length of any amount desirable. Even if this were true, there is still no teaching of the specific requirements of applicants claims, set forth in Applicant' Brief on Appeal. Moreover, there is no indication that the extensive modifications proposed by the Examiner would still leave the Lay claw hammer functional as a claw hammer, and thus they would not be obvious to a person of ordinary skill in the art.

THE DEVICE SET FORTH IN CLAIM 6 WOULD NOT HAVE BEEN OBVIOUS FROM STONEBURNER, U.S. PATENT NO. 3,930,525 IN VIEW OF WENDT, U.S. PATENT NO. 4,444,396

The Section 103 rejection over Stoneburner, U.S. Patent no. 3,930,525 in view of Wendt, U.S. Patent No. 4,444,396, is not referenced in the Answer, and is presumed withdrawn.

THE DEVICE SET FORTH IN CLAIMS 9 - 13 WOULD NOT HAVE BEEN OBVIOUS FROM STONEBURNER, U.S. PATENT NO. 3,930,525 IN VIEW OF WENDT, U.S. PATENT NO. 4,444,396

The Section 103 rejection over Stoneburner, U.S. Patent no. 3,930,525 in view of Wendt, U.S. Patent No. 4,444,396, is not referenced in the Answer, and is presumed withdrawn.

THE DEVICE SET FORTH IN CLAIMS 2-5 AND 7-17 WOULD NOT HAVE BEEN OBVIOUS FROM BREUNER, U.S. PATENT NO. 6,138,879

Breuner discloses a mallet tool for creating a pocket in a glove. Breuner does not teach a weight on the end of the handle, but a head configured to resemble a regulation ball. While the Answer states that: "It would have been obvious to a person

of ordinary skill in the art at the time the invention was made shorten the handle, particularly to less than 10 inches, as taught by the admitted prior art in order to obtain a center of mass point, or balancing point desired by the user.” [Answer Page 7, Paragraph 4]. Even if this is the case, there is no teaching or suggestion of the desirability of changing the center of mass point, or balancing point. The only motivation to modify Breuner to replace the ball with the weight, and otherwise meet the limitations of applicant’s claims is a hindsight reconstruction of applicant’s invention.

The Answer further states that “the reference handle may resemble a bat, golf club, tennis racket, and hockey stick.” [Answer, Page 7, Paragraph 4]. However this is a mere supposition by the Examiner and not a teaching in Breuner, U.S. Patent No. 6,138,879. While Breuner does mention making the mallet handle resemble a youth baseball bat, it does not mention a golf club, tennis racket, or hockey stick. Moreover, Breuner would not because the purpose of Breuner is to create a pocket for a ball catching glove, and there is no ball catching glove in golf, tennis, or hockey.

THE DEVICE SET FORTH IN CLAIM 6 WOULD NOT HAVE BEEN OBVIOUS FROM BREUNER, U.S. PATENT NO. 6,138,879 IN VIEW OF WENDT, U.S. PATENT NO. 4,444,396

The Answer concedes that Breuner does not teach a device weighing more than a regulation sporting device. [Answer, page 8, paragraph 5]. While Wendt shows a weighted device, it does not show a device in which the weight is placed as close to the end gripped end of the device as applicant claims. There is no reason to combine the tool for creating a pocket in a ball catching glove (Breuner) with an exercise club for a sport in which there is no ball catching glove (Wendt). Even if there were a reason, there is nothing to teach a reason to depart from the teaching of the long device of Wendt to place the weight so close to the hands as required by applicant’s claims. The limiting factor on length in Breuner is that necessary to generate momentum to make a pocket in a glove, not to isolate and strengthen the user’s forearms, and this is not only irrelevant to Wendt, it is contrary to Wendt’s purpose.

More specifically, there is no teaching in the references to of a device which a weight, heavier than the normal sports implement, is concentrated less than 13 inches from the users hands. This has a significantly different biomechanical effect on the

user, and is not simply to strength the muscles used in a swing, but to strengthen particular muscles in the user's forearms. This is beyond the purpose or teachings of the references.

THE DEVICE SET FORTH IN CLAIMS 2 THROUGH 17 WOULD NOT HAVE BEEN OBVIOUS FROM HAMILTON ET AL., U.S. PATENT NO. 5,312,308 IN VIEW OF HUFFMAN, U.S. PATENT NO. 5,215,307

The Answer states that "there is no indication of which parameters are critical or direction as to which of many possible choices is likely to be successful." [Answer, Page 8, Paragraph 6]. But the application repeatedly states that "The length of the handle 22 and the size and shape of the weight 28 are such that the center of mass of the device is positioned distally of the graspable portion of the handle, between about 8 1/2 inches and about 15 inches from the first end 24 of the handle, and more preferably between about 10 and 13 inches from the first end of the handle." [Application, Page 4, Paragraph 1; see, also, Page 6, Paragraph 1; Page 7, Paragraph 3; Page 9, Paragraph 2 ]. The application concludes: "In particular, it is believed that by positioning the center of mass of the weight within 13 inches of the first end of the handle, the effect of the device is focused on the user's forearms. More specifically it is important that the center of mass of the device is past the graspable portion of the handle, yet within 13 inches of the first end of the handle." Application Page 10, last paragraph. Applicant there has shown the criticality of the dimensions selected, refuted the argument that the claimed requirements are mere obvious design choices.

Neither Hamilton et al. or Huffman et al. disclose a device in which the hand is shaped like the grip portion of the implement. This is clearly absent from Hamilton, and every embodiment of Huffman has weights on both ends, like a dumbbell, rather than a handle shaped like the grip portion of a sports implement.

For at least these reason, applicant respectfully submits that the rejection of claims 2 - 17 should be reversed.

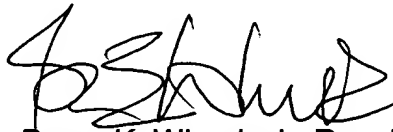
#### CONCLUSION

Applicant has invented a sports training and conditioning device which emulates the hand held implement used in a particular sport, such as a club, bat, racket, or stick, and contrary to conventional wisdom positioned the weight so that it is no more than

about 13 inches from the end of the device. The claims clearly distinguish over hammers like Lay, which do not have the required handle configuration; over dumbbell devices, like Huffman, which also do not have the required handle configuration, over forearm exercise devices like Hamilton, which do not show either the handle configuration or weight placement; and over golf swing devices like Wendt, which do not have either the handle configuration or weight placement.

As disclosed in the application, the unique handle configuration and weight placement focus the effect of the device on the user's forearms. No matter where the user grips the device, the weight is still so close the user's hands that the weight is supported by the forearms as the user swings the device. This is not shown or suggested in the prior art, and for this reason, applicant respectfully submits that the rejection of claims 2 through 17 should be reversed.

Respectfully submitted,



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CERTIFICATE OF MAILING

I certify that on May 19, 2003, APPLICANTS' REPLY BRIEF (in triplicate) was sent by first mail to the U.S. Patent and Trademark Office, address to Mail Stop Appeal Brief – Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



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